

1	BEFORE THE		
2	ILLINOIS COMMERCE COMMISSION		
3	IN THE MATTER OF:)	
4	VERIZON WIRELESS LLC, d/b/a)	
5	VERIZON WIRELESS; VOICESSTREAM)	
6	PCS I, LLC d/b/a T-MOBILE;)	
7	VOICESTREAM GSM I OPERATING)	
8	COMPANY, LLC d/b/a T-MOBILE;)	
9	OMNIPOINT HOLDINGS, INC. d/b/a)	
10	T-MOBILE; POWERTEL/KENTUCKY,)	
11	INC., d/b/a T-MOBILE; NPCR,)	
12	INC., d/b/a NEXTEL PARTNERS;)	
13	NEXTEL PARTNERS OPERATING)	
14	CORP.; AT&T WIRELESS PCS, LLC)	
15	and TELECORP COMMUNICATIONS,)	
16	INC., d/b/a AT&T WIRELESS,)	
17	vs.)	04-0040
18	ADAMS TELEPHONE CO-OPERATIVE;)	
19	ALHAMBRA-GRANTFORK TELEPHONE)	
20	COMPANY C-R TELEPHONE COMPANY;)	
21	CASS TELEPHONE COMPANY;)	
22	EGYPTIAN TELEPHONE COOPERATIVE)	
23	ASSOCIATION, INC.; EL PASO)	
24	TELEPHONE COMPANY; FLAT ROCK)	
25	TELEPHONE CO-OP, INC.; GRATFON)	
26	TELEPHONE COMPANY; HAMILTON)	
27	COUNTY TELEPHONE CO-OP; HOME)	
28	TELEPHONE COMPANY; LAHARPE)	
29	TELEPHONE COMPANY; MARSEILLES)	
30	TELEPHONE COMPANY; McDONOUGH)	
31	TELEPHONE CO-OPERATIVE, INC.;)	
32	McNABB TELEPHONE COMPANY)	
33	COMPANY; METAMORA TELEPHONE)	
34	COMPANY; MID-CENTURY TELEPHONE)	
35	COOPERATIVE, INC.; ODIN)	
36	TELEPHONE EXCHANGE, INC.;)	
37	SHAWNEE TELEPHONE COMPANY;)	
38	YATES CITY TELEPHONE COMPANY,)	
39)	
40	Petition for investigation of)	
41	wireless termination tariffs.)	

1 Chicago, Illinois
2 February 9th, 2004

3 Met pursuant to notice at 10:00 a.m.

4 BEFORE:

5 MR. TERRY HILLIARD, Administrative Law Judge

6 APPEARANCES:

7 WINSTON & STRAWN, LLP
8 MR. KING POOR
9 35 West Wacker Drive
10 Chicago, Illinois 60601
11 Appearing for Verizon Wireless;

12 ROWLAND & MOORE
13 MR. STEPHEN J. MOORE
14 77 West Wacker Drive, Suite 4600
15 Chicago, Illinois 60601
16 Appearing for NPCR, Inc.;

17 MR. MATTHEW L. HAVEY and
18 MR. MICHAEL J. LANNON
19 160 North LaSalle Street, Suite C-800
20 Chicago, Illinois 60601
21 Appearing for staff;

22 KELLEY, DRYE & WARREN
MR. JOSEPH E. DONOVAN and
MR. HENRY T. KELLY
333 West Wacker Drive
Chicago, Illinois 60606
Appearing for AT&T Wireless;

MR. PHILLIP R. SHANKENBERG
2200 First National Bank Building
St. Paul, Minnesota 55101
Appearing for petitioners;

MR. TROY FODOR
913 South Sixth Street
Springfield, Illinois 62703
Appearing for respondents;

1 APPEARANCES (Cont'd)

2 MR. W.R. ENGLAND
3 PO Box 356
4 Cumbersome City, Missouri 56012
5 Appearing for respondents;

6 MR. GARY SMITH
7 1204 South Fourth Street
8 Springfield, Illinois 62703
9 Appearing for respondents.

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1	<u>I N D E X</u>					
2				Re-	Re-	By
3	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>Judge</u>
4	None.					
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10	<u>E X H I B I T S</u>					
11	<u>Number</u>	<u>For Identification</u>			<u>In Evidence</u>	
12	None.					
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1 JUDGE HILLIARD: On behalf of the Illinois
2 Commerce Commission, I call Docket 04-0040,
3 wireless -- Verizon Wireless, LLC, d/b/a Verizon
4 Wireless, et al., versus Adams Telephone
5 Cooperative, et al.

6 Will the people in the room here please
7 identify yourselves and who you represent, and
8 then we'll attempt to work with the people who
9 aren't in the room.

10 MR. HARVEY: Appearing for the staff of the
11 Illinois Commerce Commission, Matthew L. Harvey
12 and Michael J. Lannon, 160 North LaSalle Street,
13 Suite C-800, Chicago, Illinois 60601-3104.

14 MR. MOORE: On behalf of NPCR, Inc., doing
15 business as, Nextel Partners and Nextel Partners
16 Operating corporate, Steven J. Moore, Rowland and
17 Moore, 77 West Wacker Drive, Suite 4600, Chicago,
18 Illinois 60601.

19 MR. POOR: King Poor on behalf of Verizon
20 Wireless. My address is Winston and Strawn, 35
21 West Wacker, Chicago 60601.

22 JUDGE HILLIARD: All right. Anybody have an

1 idea how to do this? Should we just read off the
2 e-mail list?

3 MR. HARVEY: Well, I suppose that's as good a
4 way as any. We're going to have a problem with
5 getting the names.

6 JUDGE HILLIARD: How about is Joe Donovan?
7 Steve at Telecom --

8 MR. MOORE: That's me.

9 JUDGE HILLIARD: Mr. Shankenburg, I know you're
10 there, can you identify yourself, at least.

11 MR. SHANKENBURG: Phillip R. Shankenburg from
12 the Briggs and Morgan Law Firm, 2200 First
13 National Bank Building, St. Paul, Minnesota
14 55101. I do represent all of the petitioners.
15 And we discussed off the record, I am not
16 licensed to practice in Illinois, but would seek
17 leave herein on behalf of the petitioners, under
18 Section 20.90 of the Rules of Practice.

19 JUDGE HILLIARD: Okay. We'll deal with that in
20 a minute. Michelle Thomas. The only other name
21 -- the only other e-mail on the service list here
22 is Smith at -- I presume that's the conference.

1 MR. SMITH: Judge, that's my -- this is Gary
2 Smith, of Loewenstein, Hagen and Smith. My
3 business address is 1204 South Fourth Street,
4 Springfield, Illinois 62703.

5 JUDGE HILLIARD: Okay.

6 MR. HARVEY: And I believe Troy Foder is also
7 on the line.

8 JUDGE HILLIARD: Troy?

9 MR. FODOR: Yes, your Honor. Appearing as
10 local co-counsel for all the respondents, except
11 the ones Mr. Smith just entered his appearance
12 for Troy Fodor. My business address is 913 South
13 Sixth Street, Springfield, Illinois 62703. And
14 my co-counsel, Mr. England, will be entering his
15 appearance as well.

16 MR. ENGLAND: Thank you, your Honor. This is
17 W.R. England, Post Office Box 356 Cumbersome
18 City, Missouri 56102, appearing on behalf of a
19 number of small local exchange carriers that were
20 specifically identified in our motion for special
21 leave to appear, which I believe was filed last
22 Friday with the Commission.

1 MR. KELLY: Also appearing on behalf of AT&T
2 Wireless, your Honor, it's Henry Kelly with
3 Kelley, Drye and Warren, 333 West Wacker Drive,
4 Chicago, Illinois 60606.

5 JUDGE HILLIARD: Is there anybody else on the
6 line that wants to identify themselves?

7 MR. DIAMOND: Yes, this is Greg Diamond, I'm
8 the chief regulatory counsel for Nextel Partners
9 appearing for NWRC Nextel Partners, 4500 Caralon
10 Point, Kirkland, Washington 98033. And I'm
11 licensed to practice law in Illinois.

12 JUDGE HILLIARD: Anybody else? All right.
13 Does anybody have an objection to Mr. Shankenburg
14 appearing pro hac vice in this matter?

15 MR. SMITH: Judge, is he the only
16 representative for these companies? I believe
17 that T-Mobile --

18 JUDGE HILLIARD: You are going to have to speak
19 up a little bit.

20 MR. SMITH: I believe he's the only one
21 appearing for T-Mobile in this case, this is Gary
22 Smith, and I believe that he would have to seek

1 leave of the Circuit Court in order to appear.

2 JUDGE HILLIARD: Okay.

3 MR. SMITH: I don't have his brief and I
4 haven't seen his motions, but I would like to
5 reserve on that.

6 JUDGE HILLIARD: Well, we've got a provision in
7 our rules that allows for counsel to appear pro
8 hoc vice on the same terms that Illinois lawyers
9 are allowed in their jurisdiction. And on the
10 basis of that I'm going to overrule your
11 objection. You can do what you want for that.

12 Mr. Shankenburg, for the time anyway,
13 you are allowed to appear pro hac vice.

14 MR. ENGLAND: This is Tripp England again. We
15 have, I believe, a written motion for special
16 leave to appear, but ask that you rule on that as
17 well at this time.

18 JUDGE HILLIARD: The motion is on behalf of
19 what party?

20 MR. ENGLAND: A number of small companies.
21 Would you like me to identify them? They are
22 listed on Attachment A.

1 JUDGE HILLIARD: Are you the respondents?

2 MR. ENGLAND: Yes, sir.

3 JUDGE HILLIARD: And are you out of state

4 counsel, too?

5 MR. ENGLAND: Yes, sir.

6 JUDGE HILLIARD: And where are you from.

7 MR. ENGLAND: We are working in Jefferson City,

8 Missouri.

9 JUDGE HILLIARD: All right. Mr. England, are

10 you making the same objection?

11 MR. ENGLAND: Not for myself, your Honor.

12 JUDGE HILLIARD: Mr. Smith.

13 MR. SMITH: I have no comment on it.

14 JUDGE HILLIARD: Then the motion to be admitted

15 is allowed, granted. Okay. The petitioners want

16 to make a presentation?

17 MR. MOORE: Yes, your Honor. What we would

18 like to do today is simply discuss where we go

19 from here. We have filed a petition to

20 investigate certain tariffs. We believe that the

21 vast majority of the issues, or put another way,

22 the most important legal issue we should be able

1 to deal with quickly rather than having to go
2 through hearings. And that would be whether or
3 not the companies would be preempted from even
4 filing such tariffs. So we would like to set up
5 a briefing schedule.

6 Another issue is whether they were even
7 provided notice. Because we did in our complaint
8 ask for suspension of the tariffs pending an
9 investigation, and we either get them suspended
10 or just the whole case dismissed based on the
11 motion for summary judgment, rather than waiting
12 for hearings.

13 MR. SMITH: I'm sorry, this is Gary Smith. I
14 couldn't tell who was speaking.

15 MR. MOORE: I'm sorry, this was Steven Moore on
16 behalf of NPCR.

17 JUDGE HILLIARD: Are you through with your --

18 MR. MOORE: Yes, I am.

19 JUDGE HILLIARD: You sir, do you have something
20 you want to say?

21 MR. POOR: Yes, your Honor. Your Honor, this
22 is King Poor, on behalf of Verizon Wireless,

1 another one of the petitioners. We would concur
2 with

3 Mr. Moore's comments that this case presents a
4 threshold issue of whether there is preemption
5 here and that that issue should be taken up at
6 the outset and that can be disposed of on the
7 papers here. There is no need for any kind of
8 factual inquiry or a record development.

9 The issue of whether there is preemption
10 is a matter of law and we would ask that a fairly
11 expeditious schedule be set on that question.

12 MR. MOORE: And this is Steve Moore again. If
13 I may add one fact, we discussed this with other
14 counsel in this case we would be willing to stand
15 on the petition as our brief for the issue of
16 preemption. So our respondents could respond to
17 that rather than us having to file another
18 document.

19 JUDGE HILLIARD: Staff, do you have a position
20 on this issue?

21 MR. HARVEY: Matt Harvey for the staff. I
22 think that our chief concern at this point is

1 that there is a threshold issue that I think even
2 precedes any issue of preemption, and that is
3 whether the tariffs are properly filed. The
4 statute requires that the tariff --

5 JUDGE HILLIARD: Can you direct me to the
6 provision that you're referring to?

7 MR. HARVEY: 15.504(a), Judge, proposed tariff
8 changes in rates, charges, classifications or
9 tariffs meeting the criteria set forth. The
10 tariff, which are those applying to small
11 companies, shall be permitted on the filing of
12 the proposed tariff and 30 days notice to the
13 Commission and all potentially effected
14 customers.

15 Likewise, 83 Illinois Administrative
16 Code, Part 745.110 requires that notice be given
17 and even prescribes a form that such notice shall
18 take. There is obviously -- one of the forms of
19 the notice must take is publication notice, but
20 part 745.110 (c)(2) provides that -- D or C 1,
21 the local exchange carrier shall provide notice
22 of all existing customers whose currently billed

1 rates or charges will be different from the -- as
2 a result of the proposed tariff, by mailing this
3 notice postage prepaid -- excuse me, postage
4 prepaid three days prior to the date the proposed
5 tariff is filed with the Commission.

6 Now, it's hard for staff to believe that
7 these -- there was not terminating access being
8 sold to these carriers, or at least on some kind
9 of reciprocal or bill in key basis prior to these
10 tariffs going into effect. So we have grave
11 doubts about whether the tariffs were properly in
12 effect.

13 And the other thing should not be
14 canceled at this point summarily that is another
15 issue that we could theoretically brief, but I
16 would be interested in the carriers
17 representations of whether they gave formal
18 written notice to the wireless carriers prior to
19 filing these tariffs.

20 MR. ENGLAND: Your Honor, this is Tripp England
21 on behalf of all the respondents, although I
22 think the facts may be the same for them as well.

1 The short answer to Mr. Harvey's question is, no,
2 the wireless were not given specific or
3 individual notice. The rule that he cites
4 indicates that notice will be provided to all
5 existing customers. And most, not all of these
6 carriers, the wireless carriers, were not
7 existing customers. In fact, they had been using
8 services but not paying for it.

9 In the few instances where some of the
10 wireless carriers may have been billed by the
11 respondent companies, the rates that they were
12 being billed are the same rates that are
13 contained in the proposed tariffs, so there is no
14 change in that regard. Notice, however, was by
15 publication as required in the second part of the
16 notice as quoted by Mr. Harvey.

17 MR. SMITH: Judge, this is Gary Smith.

18 JUDGE HILLIARD: On behalf of Alhambra.

19 MR. SMITH: That's correct. It appears to me
20 that this is a 13.504 tariff and the petitioners
21 have filed a petition under 15.504. And they
22 have asked the Commission to investigate. And I

1 believe this would be premature for you to rule
2 on any of these issues until the Commission has
3 entered an order to investigate each individual
4 separate company tariff, and then we could
5 address these issues. But right now I'm not sure
6 that you could rule on the petition itself.

7 JUDGE HILLIARD: Yeah, I think I've been
8 pondering that myself. And I think that the
9 Commission may have to issue an order, but I'm
10 willing to listen to argument on that.

11 MR. SMITH: In terms of Alhambra, Alhambra is
12 in southern Illinois, this case is now docketed
13 collectively and scheduled to be heard in
14 Chicago. We will ask for a change of venue to
15 Springfield. And I am contemplating a motion to
16 dismiss the petition. I know petitioners are
17 contemplating a motion for summary judgement, but
18 it seems to me that all of that would take place
19 after the Commission has determined that an
20 investigation is in order or not. Although the
21 petitioners represent the statute is mandatory in
22 that regard.

1 MR. HARVEY: This is Matt Harvey. I think
2 petitioners represent that because it says that
3 the Commission shall investigate, which sounds
4 mandatory to me.

5 JUDGE HILLIARD: But in any case, the
6 Commission has to issue an initiatory order and
7 they haven't done so, it hasn't done so.

8 MR. ENGLAND: This is Tripp England again. We
9 would anticipate filing a motion to change the
10 venue as well because I think the rest of the
11 respondents are situated the same as Alhambra, so
12 that is another other issues that needs to be
13 addressed as well.

14 MR. SMITH: Judge, the petition has been filed.
15 Alhambra will file its motion to dismiss fairly
16 quickly, but I would believe that the Commission
17 then would be in a position to determine whether
18 or not the investigation is appropriate. And
19 some of these factual issues in terms of the
20 notice issues that Mr. Harvey has raised I think
21 could be dealt with any other issues I have
22 suggested I would anticipate raising.

1 JUDGE HILLIARD: Well, let's see, I guess what
2 we would like to do is get this in a posture
3 where it's ripe for the Commission to do whatever
4 it is they want to do on it. It seems to me that
5 the statute provides petition is brought under
6 13.504 that the Commission has a mandatory to
7 investigate it, however, they have to issue an
8 order to that effect. So I think that is
9 probably the first order of business.

10 I would think -- I think on the basis of
11 the petition, I could bring that to the attention
12 of the Commission. If some of the parties want
13 to contest the -- whether or not an investigation
14 is appropriate under the circumstances, I would
15 give you an opportunity to do that.

16 MR. SMITH: I would like that opportunity, your
17 Honor.

18 JUDGE HILLIARD: And then assuming the
19 Commission does issue an order then we could come
20 back and deal with the summary judgement or
21 motions to dismiss, if they're not addressed by
22 the Commission's order. How does that sound?

1 MR. MOORE: What kind of a time period do you
2 see on the Commission issuing their order just to
3 investigate?

4 JUDGE HILLIARD: I neglected to bring a
5 calendar in here, do you have a calendar?

6 MR. HARVEY: I think we need a Commission
7 calendar, which I don't have with me.

8 JUDGE HILLIARD: There are two considerations,
9 one is when the Commission is meeting, and when
10 they have their agenda locked on or cut off.

11 MR. SMITH: I'm sorry to interrupt, and you
12 were going to give me a chance to respond?

13 JUDGE HILLIARD: That is another consideration
14 I was keeping in mind. However how much time do
15 you want to respond to the petition, anybody who
16 has the intention of responding?

17 MR. ENGLAND: This is Tripp England. We would
18 like the opportunity as well. Perhaps we could
19 coordinate with Mr. Smith to come up with a joint
20 filing.

21 JUDGE HILLIARD: The earliest we could get on
22 the Commission's calendar would be February 18th,

1 and you would need to file -- well, I would have
2 to write up a memorandum discussing the positions
3 and making a recommendation to the Commission.

4 MR. SMITH: How much lead time do you need for
5 that?

6 JUDGE HILLIARD: The latest I would want you to
7 file would be by the 11th. If you want to get on
8 for the 18th -- or the 19th, excuse me, that's
9 the bench session.

10 MR. SMITH: You would want parties to file
11 responses by the 11th or the 12th, and I believe
12 Monday the 16th is a holiday as for the
13 Commission as well.

14 JUDGE HILLIARD: That's right.

15 MR. SMITH: Could we have a week, and file then
16 by the 17th?

17 JUDGE HILLIARD: The 17th is what date?

18 MR. SMITH: Tuesday the 17th. Let me explain
19 this, let me -- I don't know if the other side is
20 going to want to respond to that. I don't need
21 to argue the motion, my position will be a motion
22 to dismiss. I don't believe they have alleged in

1 their petition that they are customers and they
2 can only file this petition if they are. So I
3 believe it is the posture that it's in. Now, I
4 believe --

5 JUDGE HILLIARD: Stop a second. I'm going
6 to -- because of these days off, and whatnot, it
7 would be very difficult to get this for the 18th,
8 so I think it would be more prudent to go with
9 the 24th, and then you can have -- you can file
10 through the 18th.

11 MR. SMITH: Well, I appreciate that, your
12 Honor. This is Gary Smith again. I'm just
13 saying this only because when I file this motion
14 to dismiss, I can anticipate that perhaps
15 petitioners may want an opportunity to reply. I
16 certainly don't mean to imply upon their behalf
17 but we may be at a critical juncture here that
18 even though we are trying to move this on an
19 expedited basis, I think we may want to be a
20 little careful here, and take sufficient time to,
21 what I think may be a singular issue at least
22 give everybody an opportunity to be heard.

1 MR. MOORE: This is Steve Moore. I just want
2 to understand the grounds for the motion to
3 dismiss. Looking at the second page of the
4 petition it says, the CMRS providers which are
5 telecommunication carriers of ILEC's. What else
6 do we need to allege to say we are customers?

7 MR. SMITH: Your Honor, I want to look into
8 this further. I didn't want to debate the issue,
9 but if they were customers, obviously we would be
10 charging them something, and I don't believe
11 that's the case.

12 JUDGE HILLIARD: Well, I think you are getting
13 to a summary judgment posture here. If you are
14 going to context, they have already said they are
15 customers and in a motion to dismiss you would
16 take all the facts.

17 MR. SMITH: It's an unverified complaint.

18 MR. MOORE: It's verified. Every company, all
19 four companies verified it.

20 JUDGE HILLIARD: All right, let's do this
21 another way. Let's assume that he's going to
22 file a motion to dismiss or motion for summary

1 judgment on your petition. Do you anticipate
2 that you might want time to reply?

3 MR. MOORE: Yes, we'll need to.

4 JUDGE HILLIARD: Okay. So today is February
5 9th. Do you want to take until the 17th or 18th
6 to file your motion, Mr. England?

7 MR. ENGLAND: I think that would be sufficient
8 for us.

9 JUDGE HILLIARD: Why don't we make it the 18th,
10 and how much time do you need to respond?

11 MR. MOORE: We can do that in seven days.

12 JUDGE HILLIARD: So that would be by the 25th.
13 Unless I'm misreading this, if you file it -- if
14 you get it to me by noon on the 25th, we can get
15 it on for the March 3rd bench session.

16 MR. SMITH: Your Honor, should we be briefing
17 the motion to dismiss on the same track, if
18 that's appropriate?

19 JUDGE HILLIARD: Which motion is that?

20 MR. SMITH: Well, we want to treat -- we
21 suggested that we would treat the petition itself
22 as a motion for summary judgment on the issue of

1 preemption. I'm sorry, this is Gary Smith.

2 JUDGE HILLIARD: Was it your motion or your

3 brief on your motion?

4 MR. SHANKENBERG: This is Phil Shankenberg for

5 the petitioners. And let me just jump in.

6 Perhaps it would make sense, we do have a pending

7 motion for suspension, a request for suspension.

8 Is it appropriate for the Commission to consider

9 that request for suspension along with any motion

10 to dismiss that's filed?

11 MR. HARVEY: This is Matt Harvey. The

12 Commission has no authority to suspend these

13 tariffs, under the statute. It's very clear on

14 its face. The proposed changes shall not be

15 subject to suspension and that's 13.504(a).

16 MR. SHANKENBURG: This is Phil Shankenburg

17 again. Then would it be perhaps appropriate for

18 the Commission to enter an order indicating that

19 and deny the request for suspension on that

20 basis? We would believe that preemption is

21 preemption.

22 JUDGE HILLIARD: I'll tell you what, anybody

1 can file any motion they want to in response to
2 the complaint on this schedule. And if I find
3 that the issue is not ripe for adjudication, then
4 we'll defer ruling on it, but we'll try to get
5 the issues that are appropriately addressed
6 before the Commission pursuant to this briefing
7 schedule.

8 MR. MOORE: This is Steve Moore. Just to be
9 clear, then, if we want to make a motion for
10 summary judgment we should do that on the 18th?

11 JUDGE HILLIARD: Right.

12 MR. MOORE: Thank you.

13 MR. ENGLAND: Judge, this is Tripp England,
14 would that latest motion for summary judgment be
15 based on the contention of the petitioners that
16 the tariffs are unlawful? Because if that's the
17 basis, we're going to need a lot more time to
18 respond for our factual issues that I think need
19 to be addressed.

20 MR. SMITH: This is Gary Smith. I agree with
21 that.

22 MR. MOORE: Well, we've had -- again, I already

1 offered that we could consider the complaint our
2 brief.

3 JUDGE HILLIARD: We'll simplify this. We
4 wouldn't consider your motion for summary
5 judgment on the merits of the case. The first
6 thing we're going to deal with here is whether or
7 not it's appropriate for an investigation to
8 occur. So any motions that are filed should
9 address that issue.

10 MR. MOORE: And so we will not be able to file
11 a motion for summary judgment until the
12 Commission enters an order whether there is going
13 to be an investigation?

14 JUDGE HILLIARD: Right.

15 MR. SHANKENBURG: And this is Phil Shankenburg.
16 And just to be clear, we are not allowed to ask
17 the Commission to rule on our request for
18 suspension?

19 JUDGE HILLIARD: You can ask for that if you
20 want. The staff has taken a position that it's
21 contrary to the statute, and I imagine that
22 that's what -- if you file such a motion that's

1 what they're going to say. But you can address
2 that if you want to.

3 MR. POOR: One other point, your Honor, King
4 Poor on behalf of Verizon Wireless. A comment
5 was made a moment ago about whether the
6 preemption issue should be considered in the same
7 time frame and I gather that's --

8 JUDGE HILLIARD: That's what?

9 MR. POOR: The question was made about that
10 from the respondents' counsel. And I gather now
11 it's simply going to be whether the investigation
12 should go forward?

13 MR. SMITH: Judge, this is Gary Smith on behalf
14 of Alhambra. It was my understanding that the
15 preemption issue was inextricably interlinked
16 with the motion for summary judgment.

17 JUDGE HILLIARD: Whose motion for summary
18 judgment?

19 MR. SMITH: Well, the one that the petitioners
20 were contemplating filing later on. I thought
21 that was the basis.

22 JUDGE HILLIARD: So your suggestion is we defer

1 the issue of preemption until that time?

2 MR. SMITH: Until after the Commission has

3 issued their order.

4 JUDGE HILLIARD: That makes sense to me.

5 MR. DIAMOND: Would that then be the case for

6 the motion for dismissal as well, we would defer

7 on that as well?

8 JUDGE HILLIARD: Well, what's the basis for the

9 motion to dismiss?

10 MR. SMITH: Well, I had outlined it earlier,

11 Judge.

12 JUDGE HILLIARD: Who is speaking now?

13 MR. SMITH: This is Gary Smith.

14 JUDGE HILLIARD: Mr. Diamond -- all right, go

15 ahead Mr. Smith.

16 MR. SMITH: Judge, the motion to dismiss is

17 directed to the complaint, to the petition

18 itself. And that's why I think it ought to go on

19 the schedule that you've just outlined.

20 JUDGE HILLIARD: That was my thought also. So

21 does that answer your question, Mr. Diamond?

22 MR. DIAMOND: Yes, it does, Judge.

1 JUDGE HILLIARD: With great trepidation, then,
2 I will attempt to summarize our colloquy up until
3 now. The petitioner's petition will stand as
4 their initial brief. The issue to be addressed
5 is whether or not the Commission should, as
6 requested, make an investigation of the issues
7 outlined in the petition.

8 The parties can respond to that as they
9 see fit, but we're not going to deal with the
10 issue of preemption, and we're not going to deal
11 with petitioner's motion for summary judgment at
12 this time.

13 And the schedule that we've agreed to is
14 that the respondents will file on or before the
15 18th of February. Petitioners can reply on or
16 before 2/25, and we will attempt to bring this
17 matter to the attention of the Commission and
18 attempt to get a rule on it by March 3rd. Staff,
19 are you going to file on the 18th or the 25th?

20 MR. HARVEY: I imagine we'll file the 18th and
21 see whether anybody dislikes what we have to say
22 and we dislike what anybody else has to say.

1 JUDGE HILLIARD: All right. Is there anything
2 else?

3 MR. MOORE: This is Steve Moore, and I don't
4 know if we're going to do it, but if we wish to
5 raise the issue of proper notice would we be
6 filing a motion on the 18th?

7 JUDGE HILLIARD: I think staff intends to file
8 that motion, so yeah.

9 MR. HARVEY: You can certainly file something
10 on the 18th going to the notice issue.

11 JUDGE HILLIARD: Yeah, you can do that.

12 MR. MOORE: If we do it that would be the day,
13 all right.

14 JUDGE HILLIARD: Is there anything else?

15 MR. SMITH: Judge, this is Gary Smith again. I
16 don't mean to be presumptuous on what may
17 eventually happen with the upcoming motion for
18 the Commission's order on the 3rd, but would it
19 be prudent at this time, since everybody is here
20 with calendars, et cetera, to have another status
21 -- schedule something status wise, rather than
22 pick a date arbitrarily in the future?

1 JUDGE HILLIARD: Well, we can try, I guess.

2 MR. SMITH: I'm simply trying to do this for
3 the convenience of everybody involved. We have
4 multi state participants here and multi cities,
5 and I'm just offering that as a consideration.

6 JUDGE HILLIARD: We can set a date. But if the
7 Commission, for whatever reason, defers ruling on
8 the 3rd, then we may have to pick a new date.
9 But we can tentatively agree on something, if you
10 want to.

11 MR. SMITH: Something during the week of March
12 15th okay?

13 JUDGE HILLIARD: It's okay with me.

14 MR. HARVEY: Staff is committed to five days of
15 hearing on the 5th through the 19th. I mean it's
16 possible that one of us could duck out and cover
17 if that's -- if this works for all the other
18 parties.

19 MR. LANNON: If it remains here in Chicago.

20 JUDGE HILLIARD: It's not going to get moved in
21 the next couple weeks, anyway. How about the
22 16th at 11:00 o'clock?

1 MR. SMITH: Fine with me, this is Gary Smith.

2 MR. HARVEY: That will work as well as anything

3 for staff.

4 MR. MOORE: That's fine.

5 MR. ENGLAND: That's fine with me, Tripp

6 England.

7 MR. SHANKENBURG: Phil Shankenburg, that's

8 fine.

9 JUDGE HILLIARD: So I'm not hearing any

10 objection to March 16th at 11:00 o'clock; is that

11 right? Tentatively that will be our next status.

12 MR. MOORE: And so I can understand what's

13 going to happen next, after the Commission rules,

14 if it decides to investigate the case, we will be

15 filing a motion for summary judgment. Do you

16 want that before or after the 16th?

17 JUDGE HILLIARD: Well, why don't we have our

18 meeting and then we'll agree on a briefing

19 schedule for your motion for summary judgment.

20 MR. SMITH: Thank you, Judge.

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1 (Whereupon the above-entitled
2 matter was continued to March 16th,
3 2004 at 11:00 o'clock a.m.)
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